90-132

No.

In the Supreme Court

OF THE

United States

VLADIMIR ZACHARKIEWICZ
Petitioner,

VS.

STATE OF CALIFORNIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA FIRST APPELLATE DISTRICT

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QUESTIONS PRESENTED

1. Whether a defendant has standing to challenge the voluntariness of a third party's confession when the third party's statements are included in the affidavit in support of the search warrant for the defendant's residence.

2. Whether the "independent source" doctrine justifies the admission of evidence seized from a home pursuant to a search warrant when the police initially entered the home without probable cause and secured the premises until a warrant was issued.

3. Whether a search pursuant to a warrant is genuinely independent of a prior illegal search where the affidavit in support of the search warrant informs the Magistrate that the police have already entered the home and includes information communicated to the affiant by police officers illegally inside the home.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA FIRST APPELLATE DISTRICT

The petitioner, Vladimir Zacharkiewicz, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeal of California, First Appellate District, entered in this proceeding on February 14, 1990.

OPINIONS BELOW

The opinion of the Court of Appeal of California, First Appellate District, which was not published, appears in the Appendix hereto. The Superior Court of California in and for the County of San Mateo did not issue a written opinion.

JURISDICTION

The judgment of the Court of Appeal of California, First Appellate District, was filed on February 14, 1990. A timely petition for rehearing was denied on March 16, 1990. A timely petition for review was denied by the Supreme Court of California

on May 16, 1990. This petition is filed within sixty days on May 16, 1990. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3).

STATEMENT

On 18 August 1987, San Francisco Police observed a man and a woman with nothing in their hands enter the house at 1745 Van Buren Avenue, San Mateo, California. Approximately twenty (20) minutes later, the man shook hands with a third individual and the man and woman left the house. The man was carrying a brown paper bag which he placed in the rear of a white Datsun pickup. (CT 25-27)[1]

Police followed the pickup to San Francisco and between 3:00 p.m. and 4:00 p.m. stopped the pickup to investigate possible narcotics trafficking. (CT 27; RT 34) The occupants were identified as Enrique Votobernales and Carla Dario. Police discovered a brown paper bag containing marijuana in the rear of the pickup. Votobernales and Dario were taken to the San Francisco Hall of Justice for questioning. No questioning was done at the site of the arrest. (RT 74)

Directly from the traffic stop, Officers Dowke and Boyd went to San Mateo where they met local police officers and entered Petitioner's residence. (RT 37) Prior to the entry, Officer Dowke looked through a sliding back door which had no curtains. He could observe no one in the house. (RT 41) The officers entered the residence and found no one inside. The entry occurred at approximately 4:15 p.m. (RT 86) The officers remained inside the residence until approximately 12:30 or 1:00 a.m., when the search warrant arrived. The trial court ruled that the entry and seizure of the Petitioner's home were illegal. (RT2 26)

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[1] Citations "CT" refer to the Clerk's Transcript. Citations "RT" refer to the Reporter's Transcript of hearing on Petitioner's motion to suppress evidence on 22 April 1988. Citations "RT2" refer to the Reporter's Transcript of hearing on Appellant's motion to suppress evidence on 2 May 1988.

No police officer was willing to accept responsibility for authorizing the entry into Petitioner's home. Officer Dowke testified that his supervisor, Sergeant Touche, had instructed him over the radio, approximately twenty (20) after leaving the scene of the arrest, to enter the Petitioner's home. (RT 43) Sergeant Touche testified that he did not order Officer Dowke to go to San Mateo or enter the Petitioner's home. He stated he was not involved in the decision to search the residence.

Officer Stellini testified that the decision to enter the residence was made at the San Francisco Hall of Justice by Sergeant Kern, *after* the interrogation of Votobernales and Dario. Officer Santos testified that he interviewed Votobernales and Dario at the San Francisco Hall of Justice. (RT 75) The Votobernales interrogation lasted ten (10) to twenty (20) minutes. The Dario interrogation, which followed the Votobernales interrogation, took twenty (20) to thirty (30) minutes. (RT 94)

Sergeant Kern testified that he did not instruct Officer Dowke to go to San Mateo or enter the Petitioner's residence. Kern testified that he made the decision to search Petitioner's residence after the interrogation of Votobernales and Dario. Officers Dowke and Boyd entered the house before the completion of Dario's interrogation and before Officer Kern authorized the entry.

Petitioner arrived at his home at approximately midnight and was detained. The search warrant arrived at approximately 12:30 a.m. The search, which continued until approximately 2:00 a.m., revealed marijuana and cocaine in the Petitioner's home.

The trial court ruled that the Petitioner had no standing to challenge the use of Dario's statements and did not permit her to testify. An offer of proof was made by defense counsel which indicates that during the interrogation of Ms. Dario, the police threatened to turn Ms. Dario over to immigration authorities for deportation and that but for these threats she would not have made any statements to the police. (RT 5-6) Officer Santos testified that Ms. Dario told him she entered the residence on Van Buren Street with Votobernales, saw Votobernales purchase marijuana from another man and observed additional marijuana on the kitchen table inside the house. (RT 26)

Dario's statement that there was additional marijuana on Petitioner's kitchen table supplies the only direct evidence that contraband would continue to be found at Petitioner's home. That statement is included in the affidavit in support of the search warrant. Officer Santos testified that the decision to seek a search warrant for the Petitioner's home was based, in part, on Ms. Dario's statements. (RT 25)

The affidavit in support of the search warrant informed the magistrate that officers were already at Petitioner's residence and awaiting the issuance of a warrant. (CT 16) Furthermore, the affidavit described the residence as being divided into two (2) separate units, a description which could only have been provided by officers already inside Petitioner's home. (RT 58)

REASONS FOR GRANTING THE PETITION

I

PETITIONER HAS STANDING TO CHALLENGE THE VOLUNTARINESS OF A THIRD PARTY'S CONFESSION WHEN THOSE STATEMENTS ARE INCLUDED IN THE AFFIDAVIT IN SUPPORT OF THE SEARCH WARRANT

This case presents an important issue for this Court to decide regarding the scope of a citizen's Fourth, Fifth and Fourteenth Amendment rights when coerced and unreliable statements are presented to a magistrate and offered as the basis for a search warrant. This Court has yet to determine if the vicarious exclusionary rule applies to involuntary statements of third parties. This case presents this Court with an opportunity to hold that defendant in a criminal case has the right to challenge the voluntariness of another's confession on due process grounds.

Lower court opinions have held that a defendant's due process right to a fair trial gives him standing to raise the voluntariness of third party statements used against him. See *United States ex rel. Cunningham v. DeRobertis*, 719 F.2d 892 (7th Cir. 1983); *La-France v. Bohlinger*, 499 F.2d 29 (1st Cir. 1974); *Bradford v. Johnson*, 354 F. Supp. 1331 (E.D. Mich. 1972). None of these

cases involve the application of this doctrine to the search warrant situation. Yet, the truth seeking functions of a trial and the search warrant application process are similar.[2]

In *Franks v. Delaware*, 438 U.S. 154 (1978), this Court affirmed the importance of protecting the integrity of the warrant issuing process in cases of deliberate falsehood or reckless disregard for the truth. The use of coerced statements in a search warrant affidavit raises grave dangers of untrue and unreliable statements being used to subvert judicial supervision of the warrant process. Only by allowing the defendant to challenge the coerced statement of a third party can the courts assure the truth of the underlying affidavit and adequately protect Petitioner's Fourth, Fifth and Fourteenth Amendment rights.[3]

Coerced statements are inherently unreliable. Preventing the Petitioner from raising this challenge would prevent the courts from imposing any limits on the means by which police officers may obtain statements from third parties to justify searches and seizures. Standing for the Petitioner in this situation assures the court that the truth finding function of a magistrate's review of a search warrant affidavit will be served.

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[2] The Court of Appeal did not rule on this issue, as it found that the search warrant would have inevitably been obtained on the basis of other unrelated information. Because Ms. Dario 's statements present the only direct indication that contraband would be found at the Petitioner's residence, the Petitioner contends that the Court of Appeal erred in failing to reach the standing issue.

[3] In *United States v. Payner*, 447 U.S. 727 (1980), this Court held that even a flagrant unlawful seizure of *tangible* evidence from a third party does not provide a defendant standing to challenge that seizure. Payner is not controlling here because tangible evidence does not lie; involuntary statements, on the other hand, have long been held to be unreliable. Without the right to challenge the voluntariness of the statement used in the affidavit there is no way to assure that the truth seeking function of the warrant process is met.

II

THE INDEPENDENT SOURCE DOCTRINE DOES NOT JUSTIFY THE ADMISSION OF EVIDENCE SEIZED FROM A HOME PURSUANT TO A WARRANT WHEN THE POLICE INITIALLY ENTERED THE HOME WITHOUT PROBABLE CAUSE

San Francisco Police Officers Dowke and Boyd entered the Zacharkiewicz residence without a warrant, probable cause or exigent circumstances. They held the house while other officers investigated the case to determine whether there was probable cause. Officer Santos conducted further investigation after the illegal seizure of petitioner's house. Before completing the search warrant affidavit, Officer Santos communicated with the police officers inside the Petitioner's house. Information Officer Santos obtained from the officers was included in the search warrant affidavit. Officer Santos informed the Magistrate that officers were already at the Zacharkiewicz residence awaiting the issuance of a search warrant. Under these circumstances, the independent source rule should not apply.

In *Segura v. United States*, 468 U.S. 798 (1984), the police illegally entered the defendant's apartment *with probable cause*, remained there while other officers obtained a warrant and then conducted a full search of the apartment. This Court held the illegal entry to secure the premises did not taint evidence which was secured pursuant to the warrant. This Court emphasized that the information presented to the magistrate

> "was known to the agents before the initial entry . . . It is therefore beyond dispute that the information possessed by the agents before they entered the apartment constituted an independent source for the discovery and seizure of the evidence now challenged." *Id.* at 815.

Similarly, in *Murray, v. United States*, 487 U.S. ____, 101 L.Ed.2d 472 (1988), federal agents entered the defendant's warehouse *with probable cause* and secured it from outside while they sought a search warrant.

The search warrants in *Segura* and *Murray* contain only information known before the illegal entries. The information possessed by the agents before they entered the apartment constitutes an independent source of probable cause for the issuance of a warrant and saves the material seized pursuant to the warrant. Neither *Segura* nor *Murray* explicitly addresses the issue of whether an initial illegal entry not supported by probable cause taints evidence seized pursuant to a warrant in a later search. If this limit is not imposed, the independent source rule may be extended to approve the "seize now, investigate later" tactic employed in the instant case.

Review of the instant case would enable this Court to give meaning to the limitations of the *Segura* and *Murray* cases. The case also provides a vehicle to send a signal to law enforcement that the exclusionary rule is not rendered inapplicable whenever the police eventually gather sufficient information to obtain a search warrant. The independent source doctrine has held that suppression of evidence is not appropriate where police officers illegally enter a house with probable cause and occupy the home *while the police obtain a warrant*. That doctrine should not apply to cases where the police enter a private home without probable cause and occupy the home *while they investigate the case*. Future "seize now, investigate later" cases may involve greater delay than the approximately eight hours involved in the instant matter. The police could conceivably seize a home and investigate for many hours or even days before obtaining sufficient evidence to obtain a warrant. Approving such a result provides citizens scant protection from unreasonable and illegal police conduct.

III

THE SEARCH PURSUANT TO A WARRANT WAS NOT GENUINELY INDEPENDENT OF THE PRIOR ILLEGAL SEARCH

In *Murray v. United States, supra,* this Court added another element to the independent source doctrine to assure that evidence is not obtained by exploiting illegal police conduct. The

court declared that when a prior illegality is shown, the prosecutor must

> "add to the normal burden of convincing a magistrate that there is probable cause, the much more onerous burden of convincing a trial court that no information gained from the illegal entry affected either law enforcement officers' decision to seek a warrant or the magistrate's decision to grant it." *Id.* at p. ____, 101 L.Ed.2d at 482.

If the illegality had any effect in producing the warrant, the independent source doctrine does not apply. This new element requires courts to assure that evidence seized pursuant to a warrant is genuinely independent of earlier illegal police conduct.

In *Murray* the federal agents' illegal entry, prior observations and continuing control of the warehouse to be searched were not included in the affidavit in support of the search warrant. There was no doubt that the illegal activity did not affect in any way the magistrate's decision to issue the warrant. In the instant case, however, the affidavit informed the magistrate that officers were at the residence "standing by and awaiting the issuance of the search warrant." The police asked the magistrate to ratify and approve actions the police had already taken. Whether the magistrate's decision to issue the warrant was affected by the inclusion of that information is unknown.[4]

It is important for this Court to accept this case for review to ensure that lower courts do not ignore the new requirements imposed in *Murray*. When an affidavit in support of a search warrant refers to an on-going illegal seizure, the magistrate is faced with additional improper pressure to issue a search warrant. The illegal seizure of Petitioner's home thereby placed the police in a better position than they would have been without the illegal seizure. This case offers a vehicle for this Court to address the

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[4] The trial court did not rule on the *Murray* issue as that case had not been published at the time of the hearing in Superior court. The Court of Appeal erroneously decided this issue in regard to the inclusion of the statements of Dario and did not reach it in regard to the illegal securing of the Petitioner's house.

problem of illegal entries affecting a magistrate's decision to issue the warrant. In order to preserve the deterrent effect of the exclusionary rule, this court must set out clear guidance on the meaning of *Murray*.

CONCLUSION

The petition for a writ of certiorari should be granted.

DATED: July 13, 1990

Respectfully submitted,

ANDREW H. PARNES
Counsel for Petitioner

In the Court of Appeal of the State of California

First Appellate District

Division One

People of the State of California
Plaintiff and Respondent,

vs.

VLADIMIR ZACHARKIEWICZ,
Defendant and Appellant.

[Filed February 14, 1990]

A043653

Superior Court No. C-19056

Appellant was charged with possession of narcotics seized from his home at 1745 Van Buren Avenue, in San Mateo, pursuant to execution of a search warrant in the early morning hours of August 19, 1987,[1] The affidavit in support of the search warrant was prepared by Officer Edward Santos of the San Francisco Police Department.

Officer Santos testified that while assigned to the narcotics division in July of 1987, he was investigating a man by the name of Enrique Votobernales. On August 18, 1987, during his continued surveillance of Votobernales, Officer Santos observed the suspect proceed from his home in Richmond to 1745 Van Buren Avenue in a white pickup truck with a woman later identified as Carla Dario. Votobernales parked his truck on the street and remained in it while Dario went into appellant's residence. A short time later, Officer Arthur Stellini, another member of the surveillance team, saw Dario motion to Votobernales to join her in the house. Neither of the suspects appeared to be carrying

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[1] Pursuant to a negotiated disposition on June 15, 1988, appellant entered a plea of no contest to possessing more than 57 grams of a substance containing cocaine; a charge of possession of marijuana was dismissed on the prosecutor's motion.

anything when they entered the residence. About 20 minutes later, they were observed leaving the house with a "square and bulky" brown paper bag, which Votobernales placed in the back of his pickup truck.

The two suspects drove to San Francisco, where they were detained at around 3:00 p.m. for a possible narcotics violation.[2] Officer Stellini searched the pickup truck and recovered the previously observed brown paper bag, which was found to contain three large clear plastic bags of marijuana. Votobernales and Dario were arrested on the scene, then taken by Officers Santos and Stellini to the San Francisco Hall of Justice for interrogation.

Other members of the surveillance team, including Officers Dowke and Boyd, went to San Mateo to establish surveillance along with local law enforcement personnel at 1745 Van Buren Avenue. At the scene of the arrest, the officers decided to secure and surveil the house from the outside pending application for a search warrant. It was believed that the residents of the house might learn of the arrest of Votobernales and Dario and destroy or remove the evidence.

Immediately after his arrest, Votobernales was interrogated by Officer Santos. He admitted purchasing $300 worth of marijuana in San Mateo from "the guy with the foreign name," who told him "he could get some Marijuana from him when he needed it." Dario stated that she saw marijuana inside appellant's house.

Once this information was received, the decision was made to obtain a search warrant for the premises at 1745 Van Buren Avenue. Officer Santos was assigned the task of preparing an affidavit to support the application for a search warrant. Sergeant Kern, who was in charge of the investigation, told the officers proceeding to the San Mateo location to "secure the area," and as a "last resort," enter the house "if [they] had to."

Officers Boyd and Dowke arrived at appellant's house at approximately 4:00 p.m., after Votobernales and Dario had been interviewed at the Hall of Justice. They knocked on the doors of

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[2] Appellant does not challenge the vehicle stop or subsequent search of his pickup truck.

the house, received no response, looked inside, but saw no one. They then entered the residence and remained inside until the search warrant was executed early the next morning. No search was made by the officers until the warrant arrived. They remained inside because they feared that not all five entrances to the house could be effectively surveiled from the outside.

Officer Santos completed the affidavit by 8:30 p.m. He communicated with the officers stationed inside appellant's house while he was preparing the affidavit, but did not receive any information from them which contributed to the affidavit. He only recalled learning from the officers "[t]hat persons had arrived on the premises."

The affidavit contained information obtained from the officers' surveillance of Votobernales, the search of his pickup truck, and statements he and Dario made after their arrest. Reference was also made to prior observations of Votobernales' participation in other narcotics transactions, one with a police informant. The search warrant was obtained at 12:30 a.m.

Appellant arrived at his home around midnight and was immediately detained. The search of the residence was conducted at 1:30 or 2:00 a.m. Large amounts of cocaine and marijuana were found in the house.

Appellant objected to the search on the ground that the statements made by Dario were obtained by coercion. He made an offer of proof that the interrogating officers threatened "to turn [her] over to immigration authorities for deportation" if she did not cooperate. Appellant also averred that she would not have talked with the officers in the absence of the threats. He also objected to the warrantless entry into his house. He renews these contentions on appeal.

The trial court ruled that appellant has no standing to challenge the interrogation of Carla Dario, and consequently cannot assert that claimed illegality as a ground for quashing the search warrant. Appellant argues that article I, section 28, subdivision (d), of the California Constitution (enacted as part of Proposition 8 of 1982, and hereafter section 28(d)), did not eliminate the vicarious standing rule as to involuntary confessions. He further

argues that the coerced admissions of Carla Dario tainted the subsequent search warrant and the evidence seized from his house.

We need not resolve the effect of section 28(d) upon appellant's right to assert the involuntary confession of a third party as a basis for invalidating the subsequent seizure of evidence from his residence. Assuming a prior illegality, we find that the search at issue conducted pursuant to the warrant obtained following the interrogation of Carla Dario was not the tainted fruit of a coerced confession.

The exclusionary rule forecloses introduction of all evidence obtained as the direct and derivative product of an unconstitutional search or seizure. (*Segura v. United States* (1984) 468 U.S. 796, 804; *People v. Wilkins* (1986) 186 Cal.App.3d 804, 811.) The critical inquiry when seizure of evidence follows illegal police conduct is whether the evidence complained of "has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." (*Wong Sun v. United States* (1963) 371 U.S. 471, 488; *People v. Leib* (1976) 16 Cal.3d 869, 877.) Attenuation sufficient to remove the taint from evidence obtained as a result of unlawful police conduct requires at least an intervening independent act by the defendant or a third party which breaks the causal chain linking the illegality and evidence. It must be clear that the evidence has not in fact been obtained by exploitation of such illegality, but rather is sufficiently "'"an act of free will to purge the primary taint."'" (*Taylor v. Alabama* (1982) 457 U.S. 687, 690; see also *People v. Rich* (1988) 45 Cal.3d 1036, 1079.)

Appellant seeks exclusion of "derivative" or "secondary" evidence, subsequently obtained by the police through information gathered during the course of claimed unlawful conduct. "As for secondary evidence, the defendant bears the burden of making a prima facie case that such evidence was 'tainted' by—i.e., causally linked to—the primary illegality. (E.g., *Alderman v. United States, supra,* 394 U.S. at p. 183 [22 L.Ed.2d at p. 192]; *Nardone v. United States, supra,* 308 U.S. at p. 341 [84 L.Ed.2d at pp. 311-312]; *People v. Coleman* (1975) 13 Cal.3d 867, 890-891, fn. 20 [120 Cal.Rptr. 384, 533 P.2d 1024]; *People v. Johnson* (1969)

70 Cal.2d 541, 554 [75 Cal.Rptr. 401, 450 P.2d 865, 43 A.L.R.3d 366].) This burden also is heavy. He must show more than that the challenged evidence 'would not have come to light *but for* the illegal actions of the police'; rather, he must establish that it '"has been come at by *exploitation* of that illegality . . . ."' (*Wong Sun v. United States, supra,* 371 U.S. at p. 488 [9 L.Ed.2d at p. 455], italics added.) If the defendant makes this showing, the burden shifts to the prosecution to prove that the taint has been 'purged' and hence that the evidence is admissible in spite of the primary illegality. [Citations.]" (*People v. Williams* (1988) 45 Cal.3d 1268, 1300; see also *Nix v. Williams* (1984) 467 U.S. 431, 444; *People v. Wilkins, supra,* 186 Cal.App.3d at p. 811.)

The United States Supreme Court has declared that "'the exclusionary rule has no application [where] the Government learned of the evidence "from an independent source."' (*Wong Sun, supra,* at 487 . . . (quoting *Silverthorne Lumber Co., supra,* at 392 . . .); see also *United States v. Crews* 445 U.S. 463 . . . (1980); United States v. Wade, 388 U.S. 218, 242 . . . (1967); *Costello v. United States,* 365 U.S. 265, 278-280 . . . (1961)." (*Segura v. United States, supra,* 468 U.S. 796, 805.) "'[T]he interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, not a *worse,* position that they would have been in if no police error or misconduct had occurred. . . . When the challenged evidence has an independent source, exclusion of such evidence would put the police in a worse position than they would have been in absent any error or violation.'" (*Murray v. United States* (1988) 487 U.S. ___ [101 L.Ed.2d 472, 480].)

The recent decision of the United States Supreme Court in *Murray* injected a new element into the independent source doctrine. Prior to *Murray,* the courts merely purged illegal information from the affidavit, then retested it for probable cause. (*U.S. v. Miller* (9th Cir. 1987) 822 F.2d 828, 830; *U.S. v. Granstaff* (9th Cir. 1987) 813 F.2d 1353, 1355.) "But the mere excision of the illegally obtained information can no longer be deemed, by itself, sufficient to dissipate the taint." (*People v. Koch* (1989) 209 Cal.App.3d 770, 787.) The Court in *Murray*

declared that when a prior illegality is shown, the prosecution must "add to the normal burden of convincing a magistrate that there is probable cause the much more onerous burden of convincing a trial court that no information gained from the [illegality] affected either the law enforcement officers' decision to seek a warrant or the magistrate's decision to grant it." (*Murray v. United States, supra,* 487 U.S. at p. ____ [101 L.Ed.2d at p. 482.) "[W]hat counts is whether the actual [illegality] had any effect in producing the warrant . . . ." (*Id.* at p. , fn. 3 [101 L.Ed.2d at p. 483].)

Thus, under *Murray*, to justify application of the independent source doctrine, the court must make a two-pronged finding: first, that the officers would have sought the warrant without reliance upon illegally obtained information; and second, that the magistrate would have issued the warrant even if the information derived from the illegality had not been included in the affidavit. (See *People v. Koch, supra,* 209 Cal.App.3d 770, 788.)

Respondent convincingly established that the warrant would have been sought and obtained without Carla Dario's statements. The investigating officers testified that the decision to apply for a search warrant was based on their observations of Votobernales, his arrest, the seizure of narcotics from his vehicle, and finally, the statements made by him during his interrogation. Carla Dario was not a suspect during the investigation; she was arrested and questioned only because she was a passenger in Votobernales' vehicle. The statements she made during her interrogation were secondary in importance and cumulative to those made by Votobernales.

It is also quite obvious that the warrant would have issued without Dario's confession. The affidavit contains only a brief reference to her statement, which included her observation of "marijuana on the kitchen table" of appellant's residence and "a large [closed] brown paper bag on the living room sofa . . . ."[3]

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[3] The complete reference to Dario's interrogation in the 12-page affidavit by Officer Santos is as follows: "Dario told me that Votobernales was a friend of hers and that she went with Votobernales to 1745 Van Buren Ave. Once at the San Mateo address, Dario told me

The remainder of the affidavit describes the long and protracted surveillance of Votobernales, including observations of his prior narcotics transactions, his brief visit to appellant's house on the date of the arrest, followed by his exit with a grocery bag which he placed in the rear of his pickup truck; the subsequent detention of Votobernales, the search of his vehicle, and seizure of the grocery bag which contained marijuana; and finally, the statements of Votobernales in which he admitted purchasing marijuana at appellant's residence from "a guy with a foreign name" who said he could furnish additional narcotics as needed. Such information provided probable cause for the search. Dario's statement was merely redundant and essentially superfluous.

We accordingly conclude that the search warrant was not derived from the alleged illegal interrogation of Carla Dario. (*U.S. v. Aguilar* (9th Cir. 1989) 871 F.2d 1436, 1477.) Stated another way, it is apparent that even without the statements taken from Dario, the search warrant would have inevitably been obtained on the basis of other unrelated information. (*People v. Rich, supra,* 45 Cal.3d 1036, 1080; *Green v. Superior Court* (1985) 40 Cal.3d 126, 137; *United States v. Martinez-Gallegos* (9th Cir. 1987) 807 F.2d 868, 870.)

Appellant also contends that the officers' illegal warrantless entry into his house to secure the premises tainted the search warrant. He claims the officers had no exigent circumstances to justify the pre-warrant entry.

Again, we are not required to determine the validity of the warrantless entry into and surveillance of appellant's house.[4] It is

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that she was sent inside by Votobernales to speak with the white male. Dario said that once she was inside, the white male was very friendly towards her and after awhile Votobernales walked in and she went into the kitchen where she played a guitar and saw additional marijuana on the kitchen table. Dario said she saw a large brown paper bag on the living room sofa but it was closed. Dario told me that she and Votobernales left and then drove to San Francisco where they were stopped by the police."

[4] It appears that the prosecution showed only mere unspecified fears that additional persons might hear of Votobernales' arrest and return to

quite obvious from the record that the surveillance played no part in the warrant process. The officers decided to apply for a search warrant before entry was made into appellant's residence. The surveillance obtained thereby which may have found its way into the affidavit was the observation that the house was divided into two units. Such information in no way contributed to the showing of probable cause and could not have affected the magistrate's decision to grant the search warrant. (*Segura v. United States, supra,* 468 U.S. 796, 814.) The evidence on which the warrant was secured came from sources "wholly unrelated" to the prior illegal entry. (*Ibid*.)

We accordingly conclude that appellant has failed to establish the challenged evidence has been come at by exploitation of any illegality. (*People v. Williams, supra,* 45 Cal.3d 1268, 1304; *People v. Rich, supra,* 45 Cal.3d at p. 1080.)

The judgment is affirmed.

_____

Newsome, Acting P.J.

WE CONCUR:

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Holman, J.

_____

Stein, J.

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the residence to destroy evidence. Lacking any articulated evidence that appellant or other persons might be in the house or nearby and in position to dispose of evidence, the officers had no authority to enter and secure appellant's house before the search warrant was obtained. (*United States v. Kinney* (6th Cir. 1981) 638 F.2d 941, 944-945; *Dillon v. Superior Court, supra,* 7 Cal.3d 305, 314; *People v. Koch, supra,* 209 Cal.App.3d 770, 783; *People v. Buckner* (1973) 35 Cal.App.3d 307, 316.)